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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,474	02/10/2004	Olivier Denys Andre Mesly	11096-6	9146

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EXAMINER

ELKINS, GARY E

ART UNIT

PAPER NUMBER

3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/774,474

Applicant(s)

MESLY, OLIVIER DENYS ANDRE

Examiner

Gary E. Elkins

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 31-34 is/are rejected.
- 7) ☒ Claim(s) 28-30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>20040504, 20040812</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 28-30 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim may only refer to the parent claims in the alternative. See MPEP § 608.01(n). Accordingly, claims 28-30 have not been further treated on the merits.

### ***Claim Rejections - 35 USC § 112***

2. Claims 1-27 and 31-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 7 and claim 14, line 7, “foldaby” appears to be misspelled.

In claim 14, lines 9 and 10, “the base panel”, “the tab” (two occurrences) and “the side panel” are each unclear insofar as a plurality of each were previously defined in the claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1 and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by McGivern or France ‘744. McGivern and France ‘744 each discloses a container including base panels (9, 11; 2, 2’, respectively), bottom portion (41; 1), end panels (29; 3, 3’), side panels (13c, 43, 15c; 5-10, 13-18, etc.) and handle panels (27; 4, 4’). No distinction is seen between the claimed

container and that evidenced by McGivern or France 744 as a result of the claimed intended use or capability of the container to assume three positions, i.e. the container in McGivern or France '744 each is capable of being folded into a flat or collapsed position, an erect position and a closed position as claimed.

5. Claims 1-3, 14-17, 19 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheldon-Williams. Sheldon-Williams discloses a container including base panels 3 with a bottom portion 1 located therebetween, end panels 5, channeled side panels 12, 13 and tabs 4 slidably received in the side wall channels. No distinction is seen between the claimed container and that in Sheldon-Williams as a result of the claimed intended use or capability of the container to assume three positions, i.e. the container of Sheldon-Williams is capable of being folded into a flat collapsed position as shown in fig. 1, a second position where the side panels and end panels are generally perpendicular to the base (one can position the side and end panels extending upwardly prior to the completely closed position) and a third position where the end panels 5 form a closed box along the sides of the top of the container. Also, with respect to claim 16, the container of Sheldon-Williams is capable of being folded from the blank position shown in fig. 1 to a position where the end panels 5 are folded inwardly and parallel to the base, if so desired.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheldon-Williams in view of Black. Sheldon-Williams discloses all structure of the claimed container except handle panels foldably connected to the end panels. Black teaches that it is known to make the top of a closed container with full length closure/end panels and handle panels attached to the closure/end panels. It would have been obvious to make the container in Sheldon-Williams with closure panels as taught by Black to facilitate easier transport of the container by hand and better protection of the contents during transport.

8. Claims 31, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 27 above, and further in view of Serbiak. Modified Sheldon-Williams evidences all structure of the claimed container except formation of the container from plastic (cl. 31), water resistant material (cl. 33) or anti-bacterial material (cl. 34). Serbiak teaches that it is known to make fold-up containers using plastic water resistant material with an anti-microbial agent applied to the container. It would have been obvious to make the container of Sheldon-Williams from a material as taught by Serbiak to protect the container from degradation from water and to prevent growth of microbes on the container. Anti-microbial coatings, plastic and/or plastic coated waterproof containers are well known in this art.

***Allowable Subject Matter***

9. Claims 4-12, 18 and 20-26 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

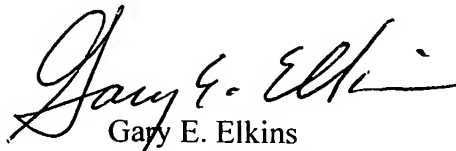
The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727